

## **In the Claims**

### ***Objections***

The examiner has objected to the applicant's use of the term "sides" with regard to a rounded object. Appropriate correction has been made in the claim, seen below.

### ***Rejections under 35 U.S.C. §112***

Claim 1 has been rejected under 35 U.S.C. §112 for being indefinite by using the language "such as" in the claim. Such language has been adjusted to make the claim comply with the examiner's request.

### ***Rejections under 35 U.S.C. §103***

Examiner has rejected claim 1 for being unpatentable over Gresch in view of Chen and further in view of Thompson. By doing so, the examiner is asserting that all the elements of the independent claim are contained in the prior art. In order to sustain a rejection under §103, the examiner must establish a *prima facie* case of obviousness by demonstrating that **all** of the claim limitations are taught or suggested in the prior art.<sup>1</sup> "All words in a claim must be considered in judging the patentability of that claim against the prior art."<sup>2</sup>

It is critical to note then, that the "padded bumper" from applicant's claim 1 is absent from any of the cited references, including the reference cited by the examiner as having such an element. To wit:

---

<sup>1</sup> *In Re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974).

<sup>2</sup> *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 CCPA 1970).

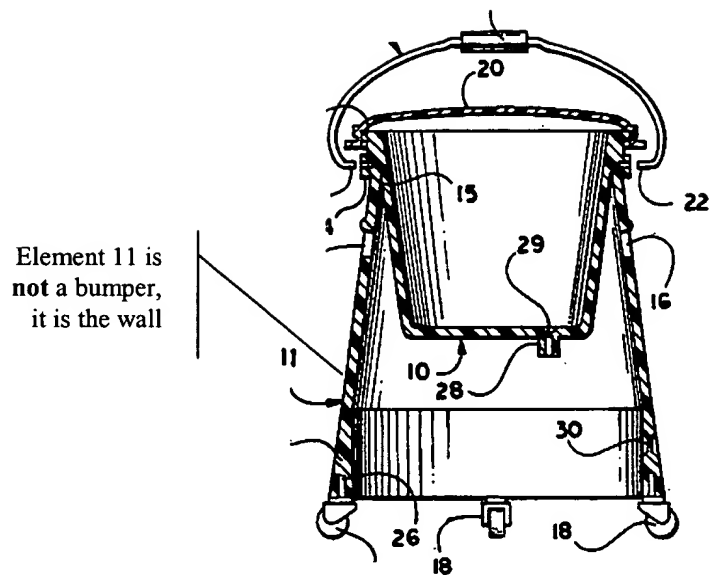


Figure 1 - Gresch Figure

The element 11 cited by the examiner as equivalent to applicant's bumper (Page 4 of Examiner's 6/14/05 Office Action) is shown above, but is, in fact, the wall of the bucket holder, as defined by the specification of the '280 application at Column 2, line 8. Compare this "skirt" to the applicant's bumper, and the distinction can be easily made and the two readily distinguished as non-analogous.

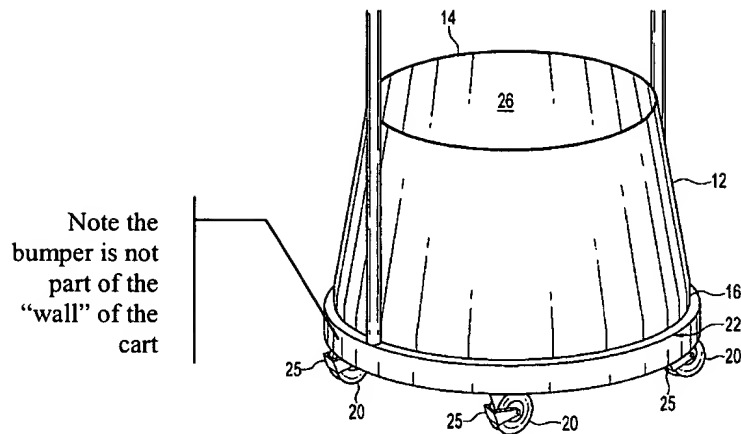


Figure 2 - Applicant's Drawing

Furthermore, if the intended function of the prior art is destroyed, then a reference may not be properly combined to establish a *prima facie* case of obviousness.<sup>3</sup> The prior art's wall is for support. Were it an actual bumper to prevent marring as in the present invention, its function would no longer operate as disclosed in the specification, since a rubber bumper of such size would not be able to support the bucket as indicated in the reference. As such, Gresch does not contain, and there is no other provision in the prior art, utilized to minimize contact with equipment as *required* by applicant's claim. As such, the examiner's rejection cannot stand.

Examiner further asserts that the hanging rod supported by two vertical bars is present in Chen, and that it would further be obvious to combine Chen with Gresch. While the clothes rack of Chen does have a crossbar, it is not able to be wheeled freely without fear of damage to equipment, as is the applicant's invention. This is witnessed in Chen in the Figures:

<sup>3</sup> *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

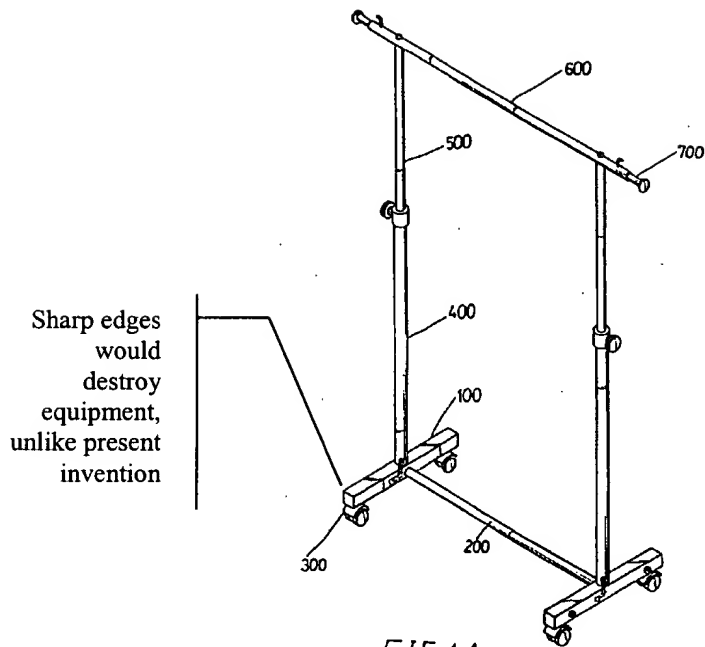


Figure 3 - Chen Figure

Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.”<sup>4</sup> The examiner has noted that the hanging rod with two vertical support bars would better accommodate the hanging garments. (Office action, Page 4) This feature is unchanged from Chen to the present invention. The improved feature of the Applicant’s device, however, is the basket being coupled with the hanging bar, which is, in fact, the novel aspect of the invention. The examiner has offered no evidence from the prior art that suggests combining these references. Thus, in the absence of any suggestion that the crossbar of Chen should be combined with a basket, the claimed invention is not obvious, and the rejection should be withdrawn.

<sup>4</sup> *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

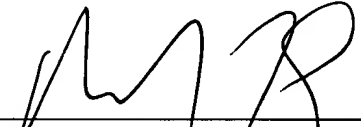
## **CONCLUSION**

Based on the above amendments and remarks, applicant believes that all of the claims in the case are allowable and an early Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference will expedite the disposition of this matter, he/she is respectfully invited to contact this attorney at the number shown below.

### **CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service, in an envelope addressed to: The Honorable Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14th day of October, 2005.

\_\_\_\_\_  
Teresa Hotard

  
\_\_\_\_\_  
Neil J. Coig • Reg. No. 48,929  
ROY, KIESEL, KEEGAN & DeNICOLA  
2355 Drusilla Lane • Baton Rouge, LA 70809  
**Telephone:** (225)927-9908 • **FAX:** (225)926-2685  
**E-Mail:** [njc@rkkdlaw.com](mailto:njc@rkkdlaw.com) • **URL:** <http://www.rkkdlaw.com>  
Friday, October 14, 2005